Howson & Howson

ANSWERS

OF

HOWSON & SON

TO

Questions Propounded through the State Department,

RELATING TO

LETTERS PATENT.

DEPARTMENT OF STATE,
Washington, *June* 17*th*, 1873.

MESSRS. HOWSON & SON,
Philadelphia, *Pa.*:

SIRS:—An International Patent Congress is about to be held in Vienna, at which it is proposed that the United States be represented.

In order that the interests of American inventors and manufacturers may be properly represented thereat, information is desired on the subjects of inquiry subjoined hereto.

Will you have the goodness to answer the several inquiries, or such of them as you may think proper to reply to, and return your answer to Hon. J. M. Thacher, Acting Commissioner of Patents, Patent Office, Washington.

As it is understood that the Congress will convene early in August next, it is very desirable that your answer may be received by Mr. Thacher before the first of July.

I have the honor to be,

Very respectfully, yours,

HAMILTON FISH.

SUBJECTS OF INQUIRY:

1. Is the protection of inventors by patents just and expedient, and, if so, on what grounds?
2. To whom and for what should patents be granted?
3. Should the grant depend on preliminary official examination?
4. What limitations are proper, if any, as to manufacture of the patented article, or payment of additional fees?
5. Should a distinction be made between home and foreign applicants, and, if so, what?
6. What has been the influence of patents on manufacturing interests in this country? Examples.
7. If a manufacturer, how is your special branch affected by patents?

Statistical as well as general information is desired, and also suggestions in relation to any other matter connected therewith.

REPLY.

PHILADELPHIA, *June 30th*, 1873.

TO THE HON. J. M. THACHER,
Acting Commissioner of Patents:

SIR:—In accordance with the request in the letter of the Department of State, we herewith send you our replies to the questions there stated. These replies have, from the brief time at our disposal for their preparation, been somewhat hastily written, and we have not been able to give to all the queries the full and deliberate consideration they call for. Taking the questions *seriatim*, however, we have expressed our opinion upon the points inquired of, and as fully as time would allow, have given our reasons for that opinion, in each case.

1. IS THE PROTECTION OF INVENTIONS BY PATENTS JUST AND EXPEDIENT, AND IF SO, ON WHAT GROUNDS?

It is just, because inventors are producers to the public stock and should derive profit from their productions, in proportion to the value.

Expedient because the knowledge of possible profit encourages invention. Wanting this possibility, invention would cease to be a generally recognized field of labor.

A main incentive to improvement in the practical arts, is the advantage in the competition of trade derived from the possession of such an improvement.

In the absence of protection by law, for the inventor to communicate a knowledge of the improvement, is to place competitors on an equal footing with himself as regards possession, and on a better footing, inasmuch as their enjoyment of that possession will not be embarrassed by any such expenditure of time, labor and money, as the first practical application of the idea may be presumed to have necessitated. Without the protection of law, then, the inventor has the alternative of retaining his advantage by secrecy if he can, or of seeing a crowd of competitors availing themselves of the fruits of his ingenuity, industry, and expenditure, and this (both from the numbers of competitors and because he has relieved them from the burdens which have hampered his own efforts), with the quite probable effect of finding himself in a worse position in the race of competition than

he was before, an evil which it is clear the unequal distribution of capital must tend to aggravate.

The utter futility of attempting protection by secrecy in a great majority of cases, is too apparent to require argument, and not less clear is the impolicy of compelling the resort to such an attempt.

It is to destroy confidence between man and man, and the hampering of business is the least of the many mischiefs likely to arise from this; it is deliberately to close up avenues of knowledge, to deprive the public of useful information for indefinite periods, in some cases perhaps for all time.

It is manifestly important to the public that there should be a steady improvement in the practical arts, that improvements made should be as speedily and widely available as possible; to this end that there should be the most active and free competition. Here it may be urged, that the grant of patents is a check on competition, by allowing to some one party the exclusive right of making and vending something. But free competition means —competition in which the parties can pursue their business upon terms as equal as respective skill, industry, and means will allow. It is not, therefore, free competition, in the true sense, if the invention which has cost one man an expense of thought, time and money, is available without that expense to his competitors. That destroys the equality by actually making the inventor's ingenuity a disadvantage to himself. It is no answer to say that the experience of one competitor to-day may be that of another to-morrow, that the risk is equal. There could be no real equality of risk, but the risk obviously enough, would weigh most heavily upon the most meritorious, the greatest producers would be the greatest losers by such a system of exchange, or reciprocal piracy.

But it may be said again, the inventor would derive from his ingenuity the like advantage as from his skill, in the reputation it would give his productions, and the consequent demand for them. The laws of all civilized nations have recognized that species of property which consists in the reputation of a trader, acquired by his skill and industry, and have provided means by which that property may be secured. A simple mark, to the use of which the law gives its appropriator an exclusive right, will

serve to distinguish his goods in the market and enable him to reap the just reward of his skill. But skill differs from invention, inasmuch as it requires considerably more than simple mental apprehension to pass the possession of it from one to another.

The skill upon which a trader's reputation is built does not pass from him with the goods which it has produced. Others may acquire equal or greater skill, but only by equal or greater exertion of the same qualities, by which his own skill has been acquired.

But the original thought embodied in a process, machine or device is thereby exposed for any ordinary intelligence to copy; it passes with the thing in which it has found expression. Its origination can confer no beneficial reputation beyond the fleeting one that may arise from mere priority of possession, which may confer a temporary monopoly.

The duration of this will be the less as the apparent value of the idea and the ease of appropriating it are the greater. The fleeting monopoly gone, the idea soon ceases to be to the originator the source of any special reputation; for that, while it lasted, rested not upon the origination, but upon the exclusive possession of the thing, which compelled the public to seek it there. After the idea has passed into the possession of competitors the only question with the public is, where can we buy what we want most advantageously to ourselves. In very rare cases, the answer to this question may be such as to maintain a monopoly in the hands of the originator. This can only arise from some accident of power, the possession of great means, special skill and facilities, a condition of affairs undesirable for a variety of reasons. Such monopolies must, as a rule, find all their security and value for the holders only in circumstances rendering them prejudicial to the public, inasmuch as they import excessive individual power likely to be selfishly used.

It is not good that a monopoly of production should rest solely on power to shut out or crush competition. Fortunately those who alone would be able to maintain such monopolies are not those amongst whom the exercise of invention is conspicuous.

Their very position, power and consequent habits of thought and action are opposed to the exercise of that faculty, whose most

useful activity depends chiefly upon the spur of free and equal competition.

Those then who might, would not because they need not, profit by such a condition of affairs, because their ambition might be gratified in other more obvious and less troublesome ways. But their power, though thus useless to foster the exercise of ingenuity in themselves, would very effectually operate to prevent its exercise by those less favored.

Small producers would find but a poor compensation for their ingenuity, time and labor in the transient reputation which a transient exclusive possession resting merely on priority in time might give them. They would not be slow to discover, that to invent was actually to feed at their own expense the repufation of more formidable rivals. Thus the relative positions of different classes of trading producers would operate to prevent inventive activity in any.

Turning now to the class of non-trading producers, employees having no direct business connection with the public, a class from which a large, perhaps the largest, proportion of the most useful invention proceeds. To talk to them of the advantage reputation would give them, is mockery.

Reputation can be of moment to them as workmen, only as it affects their ability to obtain employment at good wages. This their repute for skill will do, because by purchase their skill becomes the secure property of the purchaser so long as the connection lasts. But of what service to them would a reputation for ingenuity be, if employers could appropriate the fruits of that ingenuity without payment, but could not, by payment, secure them as peculiar property? In a condition of things wherein employers could not find their account in the personal exercise of invention, they would hardly consider its exercise by employees an element of value.

We conclude that the active and free competition which the public interests require as a means of promoting the progress of the practical arts, is promoted, not hindered, by some public recognition of the right of inventors to profit by the exercise of their ingenuity. To assure to them the exclusive right of making, using, and vending the thing created seems at once the most obvious and the best sort of recognition.

So far as rivals are concerned this is just, since it is merely to restrain them from appropriating the creations of others—it takes nothing from them, but prevents them taking from another. It is the intervention of law to secure to the inventor that personal advantage which is the only practical incentive to invention, as it is its just consequence.

These exclusive privileges may be said to operate against public interests so far as they naturally tend to delay the opening up of new fields of competition. This is a disadvantage which it is economy for the public to undergo, so far as will suffice to encourage by paying inventors ; and this points to limitation in time.

Exclusive privileges properly limited, then, so far from being in their general result checks upon competition, are really spurs to that desirable condition, and simply because they hold out to a man that prospect of *quid pro quo*, without which he cannot reasonably be expected to labor.

Admitting the soundness of this view, to induce the creation of new fields of competition by consenting to postpone for a time the general enjoyment of them in favor of the creators, is manifestly economical.

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2. To whom and for what should Patents be granted?

To any Inventor (or his legal Representatives) for any new or improved and useful production or means or mode of production in the practical arts.

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3. Should the Grant Depend upon Preliminary Official Examination?

This question we answer very emphatically, Yes ; and for the following reasons :

1. Because such examination is necessary to give Patents even a *prima facie* presumption of validity.

2. Because it is the most effectual check possible upon the creation of false titles, or conflicting titles.

3. Because it leads to greater care and precision in the preparation of specifications and claims.

4. Because it tends to increase the availability and value of patents as negotiable property.

5. Because it is to relieve Inventors of a duty which otherwise they would have to undertake for themselves; and which they could perform, if at all, only at much greater expense of time and money, and not nearly so well.

6. Because the system necessarily brings about a vast and well arranged, and accessible collection of information, touching the practical arts, and to this purpose appropriately devotes a large proportion of the fees paid by Inventors.

To these, if time and space allowed, we might add other reasons, all of which we consider to have been well illustrated by the operations of our own examining system.

We are aware that contrary impressions exist as to the workings of that system.

To see how much the operation and effects of our examining system are misunderstood abroad, especially, we have but to turn to the testimony, taken before a Committee of the British House of Commons in 1872.

Let us see what papers were offered in evidence to that Committee with the view of enlightening it as to the American system.

First, we have an extract from the report of the Commissioner of Patents Journal of August, 1856, which contains extracts from Commissioner Mason's report of 1856; second, extracts from the report of Commissioner Foote, for the year 1868, and, third, sundry articles taken from an American periodical, the Scientific American, which we understand to be published in the interest of a firm of Patent Agents, and to which much more importance appears to be attached in England than in this country: One of these articles contains a very unfair quotation from a decision of Commissioner Legget, unfair, because the quotation standing by itself does not convey the full meaning of the decision.

In addition to this documentary evidence, there is the oral testimony of an American practicing as a patent agent in London, and avowedly opposed to official examination. This gentleman illustrated his knowledge of our patent laws, by giving the Committee the startling information that, "Patent cases in America are mostly tried in the United States Courts, *but with the right of bringing an action in the State Courts*," which our

American Patent Lawyers will take as a clear case of domestic news from abroad.

Judge Mason ceased to be Commissioner of Patents in 1856, seventeen years ago. The accession of the Hon. S. S. Fisher to that office took place in 1869, and he was succeeded in 1871 by the present incumbent, the Hon. M. D. Leggett.

Judge Mason was an accomplished officer. He was perhaps the first Commissioner to set an example of the exercise of judicious liberality towards inventors; he was the first to institute an appeal within the office from the decision of the Examiners, and he made such important improvements of administration as the then condition of the law would permit. But there have been alterations of the law since Judge Mason's time, and wonderful alterations for the better in the administration of the office.

The accession of Commissioner Fisher was an era in the history of Patent Office practice. He was the first to thoroughly impress it upon the Examiners that they were subordinate to the Commissioner; he conducted the affairs of the office with unprecedented energy, and brought about a systematic practice which received general commendation. There was an interim of a few months between the resignation of Commissioner Fisher and the appointment of Commissioner Leggett, and the affairs of the office during this interim were administered by Acting Commissioner Duncan, another accomplished officer. To the present Commissioner Leggett, we are indebted for the effective manner in which he has carried out the system of competitive examination under the Civil Service Act, resulting in the promotion of well-trained officers to the position of Examiners, and securing efficiency and uniformity of action, in marked contrast with the confused and various actions of different Examiners, who in former years were appointed through political influence or some asserted but not tested acquirements. This system must effectively clear from the office all self-willed, incompetent officers, and eventually bring the management of the Bureau to a state of perfect order and system.

We are indebted also to Commissioner Leggett for the establishment of the Official Gazette, a weekly journal, containing decisions of the Courts and of the Patent Office, the claims of every Patent and reissued Patent granted, and a diagram illustrating every Patent with sufficient perspicuity to give with the

claims a general idea of the invention. Thus we have a weekly record of official acts of the Commissioners, and of the progress of the useful arts in this country. More than this, every Patent is printed and copies can be procured at once at a cost of twenty-five cents, and in quantities at a cost of ten cents each, and to add to this important Patent Office literature we have monthly volumes at ten dollars each, each volume containing a complete copy of text and drawing of every Patent granted during the month.

There are published Reports of the decisions of Ex-Commissioner Fisher, of Ex-Acting Commissioner Duncan, of Commissioner Leggett, and of Assistant Commissioner Thacher, the published Rules and Practice of the Patent Office, all of which tend to throw the clearest light upon the working of the Patent Office. But not one man was found to quote from these modern documents, and to explain therefrom to the House of Commons Committee the present condition of the United States Patent Office.

But instead, the Committee was treated to antiquated official documents, and to the unofficial dicta of a newspaper, purporting to show that the examining system was a failure.

This it never was at the worst of times; its benefits have exceeded its mischiefs under the most defective administration, and whilst official position depended not upon merit but upon political influence, and no thorough system of subordination existed in the office. A worse condition than this for the administration of an examining system, one less favorable to the development of its intrinsic merits, could not be imagined. Had the system been, on the whole, a failure, under such circumstances, the result would have proved nothing as to the propriety of preliminary official examination.

One witness before the House of Commons Committee, makes much of a quotation from a decision of Commissioner Leggett in the Moore case (C. D. 1871), in which he candidly complains of the irregular and unequal action of some of the Examiners in rejecting applications for Patents, and the witness argues from this quotation that the whole system is a failure.

The witness was very pertinently asked in reference to the particular mischiefs pointed out in this quotation, whether he really

thought that such an abuse of examination is any argument against the use of it. To which the answer, not very direct, though sufficiently positive was made, "I think every patentee ought to be his own examiner: I think he is entitled to that."

The argument of this witness appears to have been in substance that regarding the property of an Inventor in any *new* and useful invention as a species of *natural* property, he should therefore receive, for the asking, a patent for any invention which he might declare new and useful, the declaration to be such as to imply that it was founded upon search made by himself. We imagine most inventors would regard this as a privilege of doubtful advantage; that the public at large would regard it as likely to lead to much greater mischief than could arise from official examination.

But though the witness would leave it to the Inventor himself to ascertain, or to declare that he had ascertained the novelty of his invention, he would have a special tribunal to annul patents bad for want of novelty. It is hard to see why the necessary just discretion to this end could not be more beneficially exercised to prevent the issue of such patents.

It must be remembered that all the officers mentioned above, Fisher, Duncan, Leggett, and Thacher, are in favor of an official examination; more than this, Judge Mason as recently as March, 1871, has admitted the benefits—public and private—of our examining system, adding, however, the suggestion that "there may be some doubts as to whether rejections by an examining corps should be absolute or only advisory, leaving the applicant a right notwithstanding an adverse opinion by the office to take his patent at his own risk, subject to the unfavorable moral effect of such adverse opinion."

We do not think patents with such a taint upon them would be very available property; and hardly see why the examiners who could be thus trusted to send patents out, with detrimental opinions attached, could not be trusted with the power of refusing patents, especially as refusal would probably be the most merciful and least injurious course of the two.

In the same American newspaper whose opinions were made to figure so extensively in the inquiries before the House of Commons Committee, an editorial has recently been published in response to the official queries we are now discussing.

This editorial finds its premises in doctrines as to the rights of inventors, widely differing from those just quoted from other quarters. A Patent, it says, "is an infringement of equal rights, and therefore, untenable on grounds of justice. An inventor is not entitled by any process of natural right or natural justice to be a monopolist over his fellows, but on the contrary is bound by the strongest natural obligations *freely* to contribute his best powers mind and body to promote the common welfare." Patents are therefore granted on the ground of *expediency* not of *justice*.

Without stopping to discuss the sharp distinction here drawn between justice and expediency, we may point to another paragraph in the course of the same article.

The paragraph in question tells us that the idea generally prevails in Europe, that by the grant of a patent, the Government gives away to the inventor a valuable privilege, for which the receiver should pay high fees, &c., &c. But this idea, it tells us, is false, and if any obligation is conferred by either side, it is on the part of the inventor, who for the paltry reward of a patent, places the Government in possession of his new invention, from which in due time the government is strengthened, its taxable resources increased, and the wealth of the nation augmented. This seems to be hardly consistent with the ground first taken, according to which, the inventor in placing the public in possession of his invention, does simply that which it is his natural duty to do freely, so that if there is any obligation conferred by either side, clearly it must be by the Government which gives a patent for that to which it is freely entitled.

The article which is marked by this apparent inconsistency is chiefly devoted, however, to an attack upon the system of preliminary official examination, as being attended with a variety of troubles, expenses, and difficulties, and inefficient.

It complains that the system involves the employment of a large number of officials, and of another large number of patent lawyers and solicitors, for which inventors are heavily taxed.

As to the army of patent lawyers and solicitors to which the writer of the article especially objects, we do not see that to dispense with official examination would be likely to reduce the number.

We think there would be more litigation, and consequently, increased business for patent lawyers.

Inventors would feel as much, yes, more necessity for the advice of patent solicitors in drawing specifications and claims, and it is not our experience that the army of patent solicitors tends to diminish, with the apparent ease with which money may be made in that business.

The cost of the large number of officials employed under the examining system would, we think, be more than replaced, were that system abolished, by the increased cost of the large army of patent solicitors and lawyers. And would the necessary work of preliminary examination be better performed through the medium of private practitioners, than by official examiners? We say necessary work, for even the article which we are considering impliedly admits the necessity of preliminary examination by some one.

"Let those who are foolish enough," it says, "to pay fees for a patent on an old invention do so. The number will be small and they will harm none but themselves," which means, of course, that the inventor will inform himself as to the novelty or antiquity of an invention before taking his patent.

We think that any experienced inventor will reply to our question, that the action of official examiners is generally more likely to be correct, and the more so that their position is one of more direct responsibility and is not that of advocacy, as the position of solicitors would be, but one of entire impartiality.

But the editorial to which we have reference further objects to official preliminary examination, that it has become superfluous owing to the present complete system of publishing patents, rendering them accessible to inventors generally; with these, it is said, the inventor may now readily supply himself, or get access to every patent ever issued. But this would involve expense of time and money, and in many instances very great expense. Then the official examiner has these complete records immediately at hand. They facilitate his examination to a greater extent than they can that of the inventor.

But it is said, "the inventor's eye is always quicker to detect points of resemblance or difference than any official examiner can be, and he understands better than the official what ought or ought not to be claimed." This is a bold assertion, and one which we believe to be utterly incorrect as to the great mass of inventors.

It implies that the inventor is more capable than the official of performing a duty, which only casual with him, is with the official, habitual, and this too in a matter as to which the official mind would be naturally most unbiassed.

We think that most patent lawyers or solicitors will bear us out in the assertion that it is not characteristic of inventors generally, quickly or fully to apprehend either the nature of their own rights, or the real relation of these rights to others.

Moreover the work of examination involves, or should involve something far beyond mere perception of points of resemblance or difference; it involves a knowledge of the law, profitably to apply such perception, and form a judgment as to what should or should not be claimed. Whether the average inventor is more likely to possess this knowledge than the average official, owing his position to apparent competency, we leave to the judgment of our readers.

Referring, however, to the present Patent Office Publications, we see in them one of the most valuable out-croppings of the examining system—useful as educators of the inventive mind in the principles governing and affecting inventor's rights, tending to dissipate much ignorance, reform many false ideas, and thus to obviate many unfounded assertions of claims, to the great benefit of inventors themselves, and to the relief of the Patent Office from much unprofitable labor.

We conclude that the risk of liability to err in judgment as to novelty, is infinitely greater in the nature of things, with inventors or their private counsel, than with properly selected and trained official examiners, and that inventors could not conduct examinations for themselves or through private counsel, either so cheaply or so reliably as through the medium of such public officers.

Our opinion is, and probably in this the author of the article we have been quoting from will not be inclined to differ with us, that the immediate effect of an abolition of official examination would be to throw the work of examination into the hands of solicitors. Now, whoever performs the work is really an arbiter between inventors themselves and between inventors and the public at large, and to take this work of arbitration from the hands of public officers, directly responsible to the Government,

which may assure their fitness and competency, and place it in the hands of private parties whose responsibility or competency is unascertained, would in our judgment be a most unwise proceeding, whether as regards the interests of the public at large or of inventors.

The best of men may hesitate to be judges in their own cause, which is just what inventors making their own examinations would be.

Turning to the administration of our Patent Office, we may safely say that since the accession of Commisioner Fisher to the present time, a constant improvement has taken place.

Examiners have been taught that they are subordinates of the Commissioner—the head of the office—that they must follow his rulings as set forth in the published decisions, and must strictly conform to the rules. They must be competent to perform their duties properly or must give way to more competent men.

Men trained in the office are promoted in accordance with their proficiency, as proved by the test of competitive examination.

Injustice to an inventor in the Patent Office, as its affairs are at present administered, seems extremely unlikely. If an application is rejected for want of novelty by an examiner, the applicant can have a re-examination by the same officer, and if the latter again rejects his case, he can appeal, on payment of a moderate fee, to the Board of Examiners, and then for a further small fee, to the Commissioner of Patents, from whom in turn, he can appeal to the U. S. Circuit Court for the District of Columbia.

But this very thorough system of appeal is objected to as involving vexatious delays, and yet not sure in its results; it is said that even after an application may have been successfully urged through a number of appeals, a Court may afterwards differ in opinion from the officers who made the preliminary examination, and declare the Patent bad.

That such may be the case, that there may be questions of such nicety and difficulty in the consideration of claims of invention as to involve this difference of opinion among competent judges, appears to us to be in fact, a very strong argument in favor of official examination as the most likely to be intelligent, impartial, and thorough, and of a thorough system of appeals as at once a means of protection to the public against the issue of bad patents,

and a security to the inventor against possible mistakes of judgment injurious to his individual interest.

It must be allowed, however, that though the rights of applicants are most carefully guarded by the examining system as at present carried out, it is a question whether the rights of the public are equally well considered, whether patents are not issued by primary examiners, which should not be granted. This subject has received the most studied consideration at the hands of Commissioner Leggett, who originated a bill brought before the last Congress, and to be considered by a future Congress, which will provide for a revision of the action of examiners in the grant of patents by a competent Board, and it would certainly appear that the right of the public demands this.

It is further objected to official examination, or rather to the system here, that in some cases where the inventor is entitled to a patent, he is rejected by reason of the stupidity and incapability of the official examiner; and on account of poverty, unable to pay the expenses of further prosecution, the applicant is compelled to abandon his attempt to procure a patent.

Are stupid and incapable examiners necessary concomitants of an official examining system? or are they not the accidents of an improper system of appointment to office?

To this last cause, undoubtedly, are to be attributed such mischiefs.

We have already alluded to the late changes in the mode of appointing examiners, changes which have obviated, and will continue to obviate the danger of stupid and incapable examiners.

With competent examiners and with cases properly prepared and presented, the delay and expense of appeals are really likely to occur only in cases of such doubtful nature, as to make the delay and expense justifiable in the interests of the public, and really beneficial to the inventor, having regard to his future interest.

We are of decided opinion that the charges made against the examining system, are legitimate arguments only against defects of administration, traceable to a bad system of appointment to office, a mischief which is being rapidly remedied.

We regard official preliminary examination as sound in theory and beneficial in practice.

WHAT LIMITATIONS ARE PROPER, IF ANY, AS TO MANUFACTURE OF PATENTED ARTICLES, OR PAYMENT OF ADDITIONAL FEES?

To the last branch of the question, we reply that we do not think it proper to demand the payment of additional fees. Such fees are objectionable as being in the nature of a special tax upon the industry of patentees, and as seeking to make patent property a special source of public revenue.

We are of opinion that in the first place, no larger fees should be charged than may be necessary to cover the expense of a thorough and beneficial administration of the law, and that with these fees, the expense to the inventor should end.

If, however, additional fees be urged as a spur to the industry of inventors, and a mode of weeding out useless patents, we reply that as a means to that end, they are open to all the objections which may be urged against conditioning the continuance of a patent upon its operation within a certain limit of time, while the latter plan is more direct and effectual. We are inclined to doubt the propriety of either plan; and to take the view that the inventor's part of the contract should be considered as executed when he has clearly and fully disclosed a new invention, has specified his claim of novelty, and paid the administrative fees. This done, we do not think that the patentee should be further taxed, or should be told that unless he avails himself of his property within a certain time, he will forfeit it.

Such a prescription we regard as arbitrary and more likely to cause injustice to meritorious patentees than to work any real benefit to the public.

Useless patents, useless in the strict sense of the word, can injure none but the holders, while what are known as "Obstructive" Patents, by which we understand to be meant patents for inventions made practically useful only by the inventions of others, must have a measure of utility to be "obstructive" and so should entitle the patentees to an equal chance of proportionate reward. We think guards much more effectual and more correct in principle against mischief from such patents lie:

First, in a thorough system of preliminary examination to ascertain not only the novelty of inventions, but that the language of the specifications and claims is not more than commensurate with the real extent of invention; for after all, perhaps,

mere language is the most fruitful source of obstructiveness in patents.

Second, in the equitable rulings of the Courts, rebuking and discouraging the possible unreasonable selfishness of "obstructive" patentees. As to whether it would be politic to arm the Courts with a wider discretionary power to this end, we have not now the time to do more than query.

We summarize our opinion in saying, that we regard demand for additional fees as altogether objectionable, as not even the most effectual way of reaching the end for which alone it might possibly be justifiable. As to limiting a time for manufacture of the invention, we think, that to recall the history of the introduction of some of the most meritorious inventions of the day, and to reflect upon the position of many of the most useful inventors, will suggest the grave injustice likely to arise from such a measure.

If there were a limit of the kind, it should be very much longer than any heretofore adopted, not less say, than half the term of the patent; nor should this be conclusive. Patentees should be allowed to show cause for exemption from the operation of the rule. This we are aware would be to complicate the administration of the law, and to invite much shuffling and evasion. We suggest it, therefore, only as a less evil than an arbitrary limitation. We believe it the better plan to leave inventors unembarassed in the *exercise of their* patent privileges.

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5. SHOULD A DISTINCTION BE MADE BETWEEN HOME AND FOREIGN APPLICANTS? AND, IF SO, WHAT?

We think none whatever. To distinguish between home and foreign inventors is to pre-suppose that the recognition of the latter is matter of favor. We think it the sounder view to regard the benefits of the Patent Law as matter of contract between the public and inventors, regardless of nationality.

Inventive talent is confined to no locality, its fruits are equally beneficial from whatever source it comes, and there is no principle justifying the recognition of domestic invention but applies with equal force to that coming from abroad. It may be said that in these days of perfect communication, foreign inventions of value are sure to find their way here, sooner or later, without the inter-

vention of the originators. Disregarding the questionable principles involved in this ground, and admitting its truth to a certain extent, it is certain that to protect foreign invention is incomparably the most certain and speedy way of securing its benefits. It would seem the clear policy of every nation, individually considered, to make its territories, so far as law would do it, an inviting field for the inventive talent of the world. This is not to discourage native ingenuity, but the contrary, by throwing it more upon its own resources, by calling for more independent and original efforts, making it more self-dependent. We think, in short, that the public are gainers by the most liberal recognition of foreign ingenuity, and that as regards home inventors, only a very narrow, mistaken spirit could find any real benefit to them, in measures which should tend either to exclude foreign inventors from, or embarass them in, the race.

6. What has been the influence of patents on manufacturing interests in this country?

Beneficial in the highest degree, in introducing new manufactures, new and improved modes and means of working, economizing labor, and increasing the productive power of capital.

We fancy that there is scarcely a manufacturing interest existing which will not furnish numerous illustrations of this truth.

HOWSON & SON.
